IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION.

CRIMINAL APPEAL NO. 627 OF 2000

Shankar Chima Shinge ..... Appellant.

versus

The State of Maharashtra ..... Respondents.

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Smt. S.D. Khot advocate - appointed for the appellant.
Smt. U.V.Kejariwal APP for the State,

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CORAM ; V.G.PALSHIKAR &
ANOOP V. MOHTA, JJ.

DATED; 10TH SEPTEMBER, 2004.

ORAL JUDGMENT (Per Palshikar J.);

1. Being aggreived by the judgment and conviction passed by the Additional Sessions Judge in Sessions Case No.331 of 1985 convicting the sole accused under section 302 iof IPC to suffer imprisonment for life, this appeal has been preferred on the ground mentioned in the memo of appeal as also verbally canvassed before us.

2. With the assistance of Mrs. S.D.Khot advocate appointed to defend the accused/appellant, and

Additional P.P. Mrs. Kejariwal, we have scrutinised the record and re-appreciated the evidence on record, on the basis of which the learned trial Judge passed the order of conviction.

3. The prosecution story as revealed by the evidence scrutinised by us is that in the early morning of 15th March 1985 information was received in the police station, Kandivali that there is a suspected death caused in the hospital. The police officials therefore went to the hospital and found a dead body of a woman which was identified as of Smt. Muktabai, wife of the present accused/appellant, who was also present in the hospital at that time. On the basis of this report, the investigation was commenced and the accused/appellant was prosecuted for murder of his wife. The death it was alleged, was caused by strangulation using a nylon rope. The prosecution has examined eight witnesses in support of its case. There is no eye witness and the entire case stood on circumstantial evidence. Another fact which is to be kept in mind is that the incident of March 1985 and the matter was pending in Kandivali police station. Thereafter there was change of police station and the record was missing for quite sometime. It was

reconstructed in the year 1999 and trial was held in that year, resulting in conviction of the appellant as aforesaid. The entire evidence is therefore reconstructed evidence and it has to be appreciated with that aspect in mind. The main basis for conviction as found by the trial Judge is alleged extra judicial confession made by the accused before his relations and other confession made to police officials which is inadmissible.

4. Even if the entire evidence on record is accepted it is difficult to sustain the conviction as ordered by the learned trial Judge. The confession to police officials is obviously inadmissible and therefore cannot be used for any purpose. There is no extra judicial confession in this case. P.w.1 is the police inspector attached to Kandivali police station who deposes about the loss of the record and its substitution in the year 1999 by reconstruction. P.w.2 is Police constable. In the year 1985 he was attached to Dharavi police station and he deposed that on receipt of the complaint at 3.15 in the morning he was sent by PSI Joshi to call the opponent in one N.C. complaint. He was accompanied by one more police constable. He then states that while he was retunring

to Dharavi police station, they found one person moving in a suspicious manner. The witness pointed out the accused as the person and when accosted by police, the accused confessed to them that he strangulated his wife. Answering the question by the court, the witness admits that he was then in uniform. It is therefore obvious that the confession made to the police official is inadmissible.

5. P.w.3 Shivaji is the brother of the deceased. He speaks to the illtreatnment given to the victim by the accused. He states that he was told that his sister Muktabai has been killed by her husband by one Baburao. This statement of the witness is obviously hearsay and is consequently is of no use to the prosecution. He then deposes how the body was taken to the hospital, how the police were called, how the mother of the accused told the police that the accused killed his wife. It is therefore obvious that even this witness did not hear that Shankar, the accused directly saying anything about committing offence of murdering his wife.

6. P.w.4 is the brother of the accused. He has deposed that in the night around 11.15 p.m. the

accused and their mother came in the house of this witness and told the witness that the wife of the accused Shankar by name Muktabai had hanged herself in her house by rope on her neck and thereafter the accused Shankar untied the rope and kept Muktabai on the floor to find that she was alive. He then deposes about taking unconscious Muktabai to the hpspital where she was declared dead. He then states that his statement was recorded by the police. He has not stated to the police that accused Shankar told him that he had killed his wife. Consequently there is nothing in the examination-in-chief of this witness which points out the accused as the killer.

7. P.w.5 is H.C. Yeshwant who was on duty at the police station. He identifies the body from the hospital and his evidence is therefore inconsequential. P.w.6 is Yamunabai is the mother of the accused. She also speaks of accused telling her that Muktabai had hanged herself and died. She then says that after telling this to her, the accused ran away from that place. She then describes how the victim was taken to the hospital, pronounced dead, how information was given to the police. The witness was then allowed to be questioned by puting leading questions by the APP

which permissionw as granted. But she stoutly denied the suggestion that her son accused told her that he (Shanker) killed Muktabai. The evidence of this witness also is therefore of no use to the prosecution.

8. P.w.7 is Shankar is the police inspector and investigating officer of the offence. His evidence is wholly inconsequential as nothing occured during the investigation which can throw some light on the facts alleged.

9. P.w.8 is Dr. Kumar who says that death has occured due to strangulation and has denied the possibility of death having occured by hanging by neck. It is on the basis of this evidence that the learned trial Judge recorded the judment and order of conviction.

10. The learned Judge has held this mainly because of the deposition of doctor saying that the marks do not indicate the death by hanging. It must be death by strangulation and the accused is the only person who was last seen with the deceased and might be a perpetrator. We are unable to accept this kind of reasoning. We find it difficult, in such

circumstances, to uphold the order of conviction. It is pertinent to note that factually it is not by strangulation. There is no eye eiwntess. The conviction is therefore has to rest solely on the testimony of the doctor that death is by strangulation and not by hanging and there is nothing on record to connect the accused for such death. The material on record, in our opinion, is hopelessly inadequate to come to a conclusion of guilt with any certainty. In the result, therefore, the appeal must succeed and is allowed. The accused is set at liberty, if not otherwise required.

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